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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 962.

JOHN N. THOMPSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION.

CHARLES S. SCOTT,
ELISHA SCOTT,
JOHN J. SCOTT,
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Topeka, Kansas,
J. NELSON THOMPSON,
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Kansas City, Missouri,
Attorneys for Petitioner.

R. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

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Although the petitioner in this case was listed as one of the attorneys for the appellant in the Court of Appeals, the only notice of the decision reached by the Court of Appeals was received by your petitioner on January 8, 1963, and a copy of this letter is included herein. This letter specifically states that the decision had been received and filed as of December 29, 1962. That is the only date mentioned and no other date of entry appears anywhere on or within the decision itself. Therefore, the date of December 29, 1962, was the only date available to your petitioner and such date was honestly believed to be the date of entry of judgment. Believing December 29, 1962, to be the proper date, your petitioner predicated his petition upon that date and was successful in getting it on file within ninety days from such date without seeking an extension of time.

Your petitioner contends that the actual date of entry of the judgment is December 29, 1962, since the Court of Appeals is a court of record and as such can speak only through its mandate in order to issue judgment, and the mandate in this case was not received and filed until December 29, 1962, as evidenced by the letter of January 7, 1963. See *Commissioner of Internal Revenue* v. *Bedford's Estate*, 325 U.S. 283; *United States* v. *Gomez*, 1 Wall. 690. In the former case the Court held that an opinion was merely an "opinion" rather than a "judgment" even though it gave dates of argument and decision and stated that the order was reversed, and only the subsequent order for mandate was the judgment from whose date time for filing a petition for certiorari should be computed.

Also, a decision of the Court does not become final until thirty days after it has been filed, because of the possibility of a motion for rehearing being filed. In all cases where a decision is final, it is necessary that a judgment issue thereon. Even though a decision or opinion may be final, such cannot be a judgment until after the mandate has been received and entered, since the mandate speaks for a court of record. That date is December 29, 1962, in the case at hand. See *Puget Sound Co.* v. *King County*, 264 U.S. 22, which states that the time allowed for a writ from the Supreme Court to review a judgment does not begin from the previous filing of the Court's opinion or decision, but rather from the date of the formal entry of judgment.

This is not a jurisdictional question, but rather a discretionary one over which the Supreme Court alone has the right and power to decide. In this case there are so many questions of importance raised including those of a novel nature and so many thousands of ex-servicemen that may be affected by the outcome of this action, that a mere honest interpretation of a relatively minor point should

not prevent this Court from reviewing this most important and vital case and from ruling on its merits.

Respectfully submitted,

J. NELSON THOMPSON,
Suite 200, 2711 Troost,
Kansas City, Missouri,
CHARLES S. SCOTT,
514½ Kansas Avenue,
Topeka, Kansas,
Attorneys for Petitioner.

UNITED STATES DISTRICT COURT

Charles W. Cahill
Clerk

Office of the Clerk
District of Kansas
Topeka, Kansas
January 7, 1963

Mr. Elmer Hoge
Assistant United States Attorney
Federal Building
Topeka, Kansas
Mr. Charles S. Scott
Attorney at Law
410 Kansas Avenue
Topeka, Kansas

Re: Civil No. T-2336 United States v. John N. Thompson

Dear Sirs:

Mandate affirming the decision of the District Court in the above entitled civil action has been received and filed as of December 29, 1962.

Very truly yours,

Charles W. Cahill, Clerk
By /s/ L. Bernice Lutes, Deputy

cc: Mr. J. Nelson Thompson
Attorney at Law
Suite 200, 2711 Troost
Kansas City 9, Mo.